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Ten years of public policies for  
employee ownership in Europe

– past, present, future

A lawyer's perspective

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The European Economic and Social Committee has recently published an Opinion on Employee financial participation in Europe

The purpose of this presentation is to suggest practical applications for certain of the recommendations made by the Committee in the areas of :

- The legislation and procedures relating to the offering of company shares to employees (principally under the EU Prospectus Directive), and
- The tax and social charge regimes applicable to the advantages made available to employees in these employee stock purchase plans

## Recommendations of the Committee

- Among the Committee's recommendations, we note the following :
  - The application of employee financial participation should be facilitated EU-wide on the basis of common principles
  - Businesses operating across borders should be offered help, particularly in overcoming tax obstacles

## The Prospectus Directive

- A major reform of EU financial legislation that came into force in 2005
- Intended to harmonise European regulation of stock offerings and facilitate cross border offerings within the EU
- One of the fundamental principles of the directive is to concentrate regulatory oversight in the home country, so that companies do not need to contend with multiple regulators applying different rules
- For employee plans, the directive eliminated prospectus requirements for share offerings :
  - no more prior review of offerings by securities markets regulators,
  - substantial savings of time, money and complexity

## The Prospectus Directive, cont.

- Today, an EU based company that has shares listed on a regulated market should be able to offer shares to employees across the EU, without regulatory review
- By 2012, the same should be true for any EU based company
- In practice, however, the reality of making offerings under the Prospectus Directive is far more complex

## The Prospectus Directive, cont.

- We believe that implementation of employee financial participation through shareholding could be further encouraged by:
  - Reinforcing one of the fundamental principles of the PD, which is that regulatory oversight should essentially be left to the home country,
  - Recognising the diversity of forms (custody) that can be used to implement employee shareholding

## The Prospectus Directive, cont.

- In 2000, to offer stock to employees in the EU :
  - 3 states required a prospectus to be published (locally or by mutual recognition)
  - All of the other member states of that era generally admitted such offerings without a prospectus
  - Some states that have since joined the EU were generally not included in such plans (concentrated in the newer member states)

## The Prospectus Directive, cont.

- In 2010, to offer stock to employees in the current 27 member states :
  - In 26 of the 27, an offering may be made with a simple “information document”
  - 1 has not yet properly transposed the directive
  - 1 imposes a specific format for the information document
  - 2 impose specific signature requirements
  - 3 still require prior regulatory review of offering “communication” documents
  - At least 3 require the use of a financial intermediary
  - Several impose different procedures if shareholding vehicles are used, with an irregular treatment of the different models used (special purpose corporations, funds, trusts, “civil” companies)

## Collective shareholding under the prospectus directive

- In all 27 states, collective shareholding may be used, in some form or another, but
  - Most lack an official position,
  - Several require specific regulatory approval of the vehicle, but not the underlying employee shareholding,
  - Positions vary significantly depending upon the type of vehicle used, and
  - The plans are thus vulnerable to recharacterisation (securities law and/or tax)
  
- At least 3 will not extend to collective shareholding the tax benefits provided for direct employee shareholding

## The Prospectus Directive, cont.

- We believe that implementation of employee financial participation through shareholding should be further encouraged by:
  - Reinforcing one of the fundamental principles of the PD, which is that regulatory oversight should essentially be left to the home country,
  - For employee shareholding, putting the regulatory focus on the substance (employee shareholding) not the form (custodial arrangements)

## Tax Treatment

Special tax regimes designed to encourage employee shareholding :

- Several countries have them
- In several more, no official regime is provided, but practitioners have developed arguments to neutralise adverse tax effects at subscription

But in several countries, the benefit of special tax regimes is lost if collective shareholding is used, and

In many countries, all advantages are taxed as salary, at the time of inception, which is a major disincentive

## Tax treatment, cont.

- For a European company wishing to develop employee participating through shareholding, in most cases the company would offer :
  - A discount on the purchase price, and/or
  - A matching contribution to increase employee participation

## Tax treatment, current situation

Sample countries	Tax at inception	Tax exit
France	If no savings plan, income tax and charges If in savings plan, some charges only	If no savings plan, capital gains treatment If in savings plan, no tax or charges
Germany	If direct holding, €360 exemption followed by income tax and charges If FCPE, no tax	If direct, capital gains treatment If FCPE, income tax and charges
Italy	If direct holding, €2,045 exemption followed by income tax and charges If FCPE, position unclear	If direct, capital gains treatment If FCPE, income tax and charges
Spain	If direct holding, €12,000 exemption followed by income tax and charges If FCPE, income tax and charges	If direct, capital gains treatment If FCPE, capital gains treatment
UK	If no SIP, income tax and charges, with possible deferral of certain amounts If SIP, income deduction and no tax	If no SIP, income tax and charges on deferrals, followed by capital gains treatment If SIP satisfied, no tax

## Tax recommendations

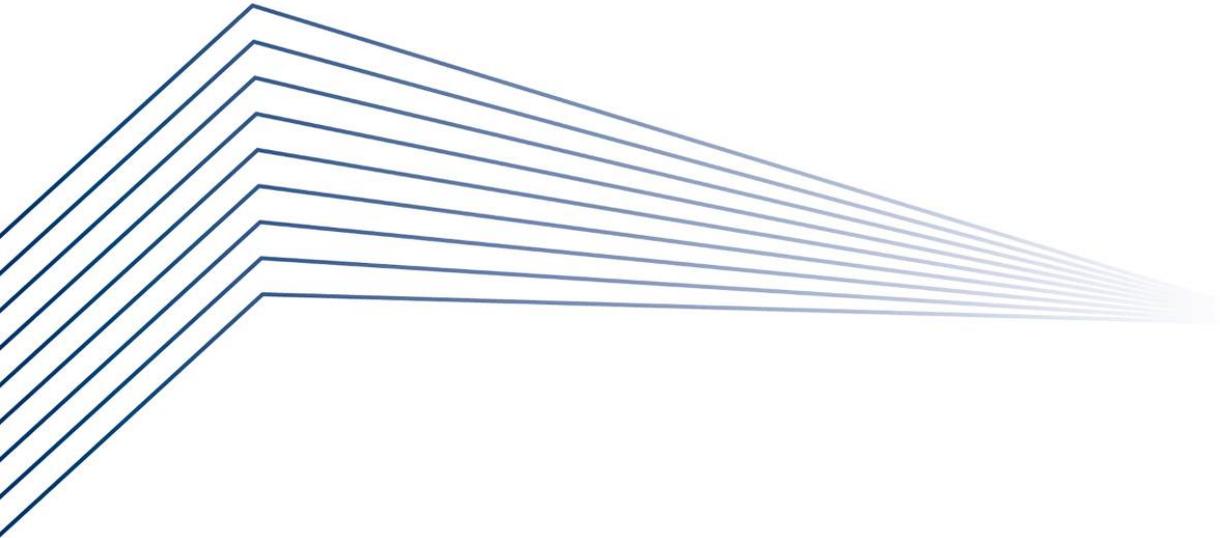
- In the area of taxation, we note two recommendations of particular interest:
  - Before a European model with uniform tax incentives is established, mutual recognition of the schemes of the individual EU Member States should be the aim
  - Deferred taxation could be taken as a lowest common denominator basis for a proposed model

## Tax treatment, deferred taxation

- We propose that each country continue to apply its own tax regime, but that there be an agreement on deferred taxation resulting in an alignment of timing :
  - To encourage the development of employee shareholding, countries should agree that advantages (discount and matching) should not be taxed at inception,
  - Countries would continue to apply their own regimes at the time of exit from the plan, so no lost tax revenue (assuming positive share price performance), only a deferral

## Tax treatment, deferred taxation, cont.

Sample countries	Tax at inception	Tax exit
France	None	If not conformed to savings plan, income tax and charges on discount and matching, followed by capital gains treatment If conformed to savings plan, no tax or charges
Germany	None	Income tax and charges on discount and matching realised above €360, followed by capital gains treatment
Italy	None	Income tax and charges on discount and matching realised above €2,045, followed by capital gains treatment
Spain	None	Income tax and charges on discount and matching realised above €12,000, followed by capital gains treatment
UK	None	If SIP satisfied, no tax If no SIP, income tax and charges on discount and matching realised, followed by capital gains treatment



# Conclusion